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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,329	01/31/2001	Koji Mikami	FUJZ 18.278	4265
26304	7590	07/29/2004	EXAMINER	
KATTEN MUCHIN ZAVIS ROSENMAN 575 MADISON AVENUE NEW YORK, NY 10022-2585			LEE, PHILIP C	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/773,329	MIKAMI ET AL.	
	Examiner	Art Unit	
	Philip C Lee	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 January 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/31/01.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1-5 are presented for examination.
2. It is noted that although the present application does contain line numbers in the specification and claims, the line numbers in the claims do not correspond to the preferred format. The preferred format is to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the Examiner and Applicant all future correspondence should include the recommended line numbering.

*Claim Rejections – 35 USC 112*

3. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - a. The following terms lack proper antecedent basis:
    - i. The premium bandwidth control service – claim 1.
  - b. Claim language in the following claims is not clearly understood:

- i. As per claim 1, lines 18-19, it is unclear how the serviceable bandwidth manager notifying a present applied threshold value [i.e. transmitting the threshold value to the network offerer.].
- ii. As per claim 3, lines 6, it is unclear at what time does the reservation manager notifies a customer [i.e. when the service becomes available?].

*Claim Rejections – 35 USC 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. *3-5*  
Claim 1<sup>1</sup> are rejected under 35 U.S.C. 103(a) as being unpatentable over Rollins, U. S. Patent 6,738,348 (Rollins) in view of Marchok et al, U.S. Patent 6,473,394 (hereinafter Marchok).

6. As per claim 1, Rollins taught the invention substantially as claimed operated by a network offerer and a customer (col. 2, lines 24-33) comprising:

a customer interface for accepting, from the customer, an available bandwidth of a premium bandwidth control service demand with a higher priority than a regular bandwidth control service of best effort type (col. 3, lines 56-67),

a network interface for accepting an applied threshold value of the premium bandwidth control service from the network offerer (col. 3, lines 67-col. 4, lines 4), and

a serviceable bandwidth manager for comparing an available bandwidth of the premium bandwidth control service demand with the applied threshold value to determine whether or not the premium bandwidth control service is available, for notifying the result to the customer through the customer interface, and for demanding that the network should secure a bandwidth in order that the customer who has received the notification of a service permission can start the premium bandwidth control service when the premium bandwidth control service is determined to be available (col. 4, lines 51-67; col. 5, lines 47-55).

7. Rollins did not teach determining and adopting an applied threshold value.

Marchok taught the serviceable bandwidth manager notifying a present applied threshold value in response to a collection demand by the network offerer, and adopting a changed applied threshold value for the determination when the network offerer has changed the applied threshold value (col. 22, lines 14-18, 31-39).

8. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Rollins and Marchok because Marchok's method of determining and adopting an applied threshold value would

increase reliability of Rollins's system by avoiding the system to exceed a predetermined bandwidth threshold value causing a system bandwidth overload (col. 2, lines 6-9).

9. As per claim 3, Rollins and Marchok taught the invention substantially as claimed in claim 1 above. Rollins further taught wherein a service reservation manager is provided which reserves and manages a customer whose premium bandwidth control service demand is rejected by the serviceable bandwidth manager, and which notifies to the customer that the premium bandwidth control service becomes available at that time (col. 4, lines 61-col. 5, lines 4).

10. As per claim 4, Rollins and Marchok taught the invention substantially as claimed in claim 1 above. Rollins further taught wherein an additional rate manager is provided which manages an accounting rate set according to a remaining bandwidth of the premium bandwidth control service and forming an additional rate calculation standard (col. 1, lines 9-16), and which notifies the accounting rate corresponding to the remaining bandwidth of the premium bandwidth control service at a time when a service is demanded by the customer to the serviceable bandwidth manager, while the premium bandwidth control service is offered (col. 2, lines 53-65; col. 4, lines 61-67).

11. As per claim 5, Rollins and Marchok taught the invention substantially as claimed in claim 4 above. Rollins further taught wherein when the customer releases the premium bandwidth control service, the additional rate manager changes the accounting

rate to a new accounting rate considering the released bandwidth for accounting (col. 3, lines 1-11).

12. Claim 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rollins and Marchok, in view of Ibaraki et al, U.S. Patent 6,590,865 (hereinafter Ibaraki).

13. As per claim 2, Rollins and Marchok taught the invention substantially as claimed in claim 1 above. Rollins and Marchok did not specifically detailing the release of the service. Ibaraki taught demanding a release of the premium bandwidth control service from the serviceable bandwidth manager, when the applied time has elapsed (col. 21, lines 63-col. 22, lines 7).

14. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Rollins, Marchok and Ibaraki because Ibaraki's method of releasing the premium bandwidth control service would increase the system's fairness by allowing premium bandwidth control service to be allocated to another customer after the applied time has elapsed.

## CONCLUSION

15. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

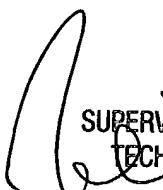
Art Unit: 2154

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Lee whose telephone number is (703)305-7721. The examiner can normally be reached on 8 AM TO 5:30 PM Monday to Thursday and every other Friday.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703)305-8498. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

18. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)350-6121.

P.L.

  
JOHN FOLLANSBEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100